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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

This Document Relates to:  
  
ALL ACTIONS

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, RASIER-CA, LLC'S  
STATEMENT IN SUPPORT OF  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER  
ANOTHER PARTY'S MATERIALS  
SHOULD BE SEALED [ECF No. 1554]**

Judge: Hon. Lisa J. Cisneros  
Courtroom: G – 15th Floor

UBER'S STATEMENT ISO PLAINTIFFS' ADMINISTRATIVE MOTION  
TO CONSIDER WHETHER ANOTHER PARTY'S MATERIALS SHOULD  
BE SEALED

**DEFENDANTS' STATEMENT IN SUPPORT OF SEALING****CONFIDENTIAL MATERIALS**

Pursuant to Civil Local Rules 79-5(f)(3) and (c)(1) and the Protective Order entered in this case dated December 28, 2023, ECF 176 ("Protective Order"), Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively "Uber"), respectfully submit this statement in support of Plaintiffs' Administrative Motion to Consider Whether Another Party's Material Should Be Filed Under Seal, dated August 30, 2024, ECF 1554 ("Plaintiffs' Motion").

**I. BACKGROUND AND REQUESTED SEALING**

Plaintiffs' Motion concerns two documents:

Document	Description	Designating Party
Exhibit E to Plaintiffs' Letter Brief Re: The Chertoff Group	A confidential document created by the Chertoff Group designated as "Confidential" by Uber under the Protective Order	Uber
Plaintiffs' Letter Brief Re: The Chertoff Group	Plaintiffs' Letter Brief containing quotations to Exhibit E, which is a confidential document created by the Chertoff Group designated by Uber as "Confidential"	Uber

These documents contain confidential and commercially sensitive business information that would harm Uber's competitive standing if the documents were made public. Uber therefore submits this statement requesting that the Court seal the documents under Local Rule 79-5(f)(3).

**II. LEGAL STANDARD**

Documents which do not relate directly to the merits of a case are properly sealed when a moving party makes "a particularized showing under the good cause standard of Rule 26(c)" *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (internal quotations omitted); *Ctr. For Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Federal Rule of Civil Procedure 26(c) states that good cause may exist when issuing an order to seal is necessary to "protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense”. Fed. R. Civ. P. 26(c).

The documents here are related to a motion to enforce subpoena compliance, they are not produced in relation to a dispositive motion. *See United States v. Selugh*, 896 F. 3d 1007, 1015 (9<sup>th</sup> Cir. 2018); *Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK), 2022 WL 4227545, at \*1; *Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF 2020 WL 6387381 at \*1 (N.D. Cal. Feb. 24, 2020). Therefore, the good cause standard applies. Discovery motion materials “are actually one step further removed in public concern from the trial process than the discovery materials themselves.” *Selugh*, 896 F. 3d at 1015. District Courts have discretion to balance the interests of private parties and public disclosure when deciding to seal documents. *Kamakana*, 447 F.3d at 1180.

### III. UBER’S MATERIAL SHOULD BE KEPT UNDER SEAL

Exhibit E to the Plaintiffs’ letter brief regarding their subpoena to the Chertoff Group (ECF 1549-6) and the Plaintiffs’ unredacted letter brief (ECF 1549) should be sealed under the good cause standard. These documents contain sensitive non-public information including commercially sensitive information and business information. *See Gromada Decl.* ¶¶ 2-3. Uber has a legitimate interest in sealing the documents in order to avoid harm to its competitive standing. There are no less restrictive alternatives to sealing these documents.

#### A. Failing to Seal the Documents Would Harm Uber

The documents at issue contain commercially sensitive, non-public information regarding Uber’s business practices and internal policies that could harm Uber’s marketplace standing and cause undue harm if publicly disseminated. *See Gromada Decl.* ¶ 4.

**Exhibit E to the Plaintiffs’ Letter Brief Regarding Their Subpoena to The Chertoff Group:** The document is a report by the Chertoff Group entitled *An Evaluation of Safety Incident Categorization Capabilities for Uber*, dated December 3, 2019. The report details Chertoff’s strategic-level evaluation of Uber’s application of an independently-developed sexual harassment, sexual misconduct, and sexual assault taxonomy to its U.S. rideshare platform incident data set and its classification of incidents of physical assault or theft and robbery that result in fatality. Uber produced this document in this litigation, Bates stamped as “UBER-MDL3084-DFS000426873” through

1 “UBER-MDL3084-DFS000426905,” and designated as “CONFIDENTIAL.” The Exhibit contains  
 2 highly confidential, sensitive non-public information, such as information about Uber’s internal  
 3 business practices, Uber’s internal policies and practices, and the technology platforms and practices  
 4 utilized by Uber. *See* Gromada Decl. ¶ 2. By its nature, this document is a report commissioned to  
 5 study Uber’s internal business processes, which Uber has spent resources developing and maintains  
 6 as confidential. *See id.* The document itself states that “this document is proprietary and is provided  
 7 solely for evaluation by Uber, and may not be used by any other entity or for any other purpose without  
 8 the prior written consent of both Chertoff Group, LLC,” evidencing Uber’s contemporaneous intent  
 9 to maintain this proprietary document as confidential. *Id.*

10 The disclosure of this document could harm Uber’s marketplace standing and cause undue  
 11 harm if publicly disseminated. *See id.* ¶ 4; *see also Lathrop v. Uber Techs., Inc.*, No. 14-CV-05678-  
 12 JST, 2016 WL 9185002, at \*2 (N.D. Cal. June 17, 2016) (sealing “commercially sensitive information  
 13 regarding how Uber and [another business] conduct their business”).

14 **Plaintiffs’ Unredacted Letter Brief Re: The Chertoff Group:** This document is a letter brief  
 15 submitted by Plaintiffs in support of a motion to enforce third party subpoena against the Chertoff  
 16 Group, filed on August 30, 2024. A narrowly redacted version of this brief is filed on the docket at  
 17 ECF No. 1549. The redacted portions contain direct quotations to the confidential Chertoff Group’s  
 18 Report that is attached as Exhibit E regarding Chertoff’s investigation. *See* Gromada Decl. ¶ 3. For  
 19 the same reasons that the underlying report would harm Uber if revealed, the redacted quotations in  
 20 the letter brief would also harm Uber’s marketplace standing and cause undue harm to Uber if publicly  
 21 disseminated. *See id.* ¶ 4.

#### 22 **B. A Less Restrictive Alternative to Sealing is Insufficient to Prevent Harm**

23 No less restrictive alternative to sealing the exhibits to the documents at issue is sufficient. The  
 24 Chertoff Report is not amenable to redacting portions of confidential content; its entire contents are  
 25 confidential. The Letter brief is already filed (with narrowly tailored redactions drawn only over direct  
 26 quotations from the confidential Chertoff Report) on the public docket. The material that Uber  
 27 proposes sealing contains sensitive information and is not intended for public dissemination. *See*

Gromada Decl. ¶ 4. As such, actions short of sealing would be insufficient to protect Uber's competitive standing and interests in confidentiality.

#### IV. CONCLUSION

For the foregoing reasons, Uber respectfully requests that the Court order that Exhibit E to the Plaintiffs' letter brief regarding their subpoena to the Chertoff Group and the Plaintiffs' unredacted letter brief be maintained under seal.

DATED: September 6, 2024

Respectfully submitted,

**SHOOK HARDY & BACON L.L.P.**

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